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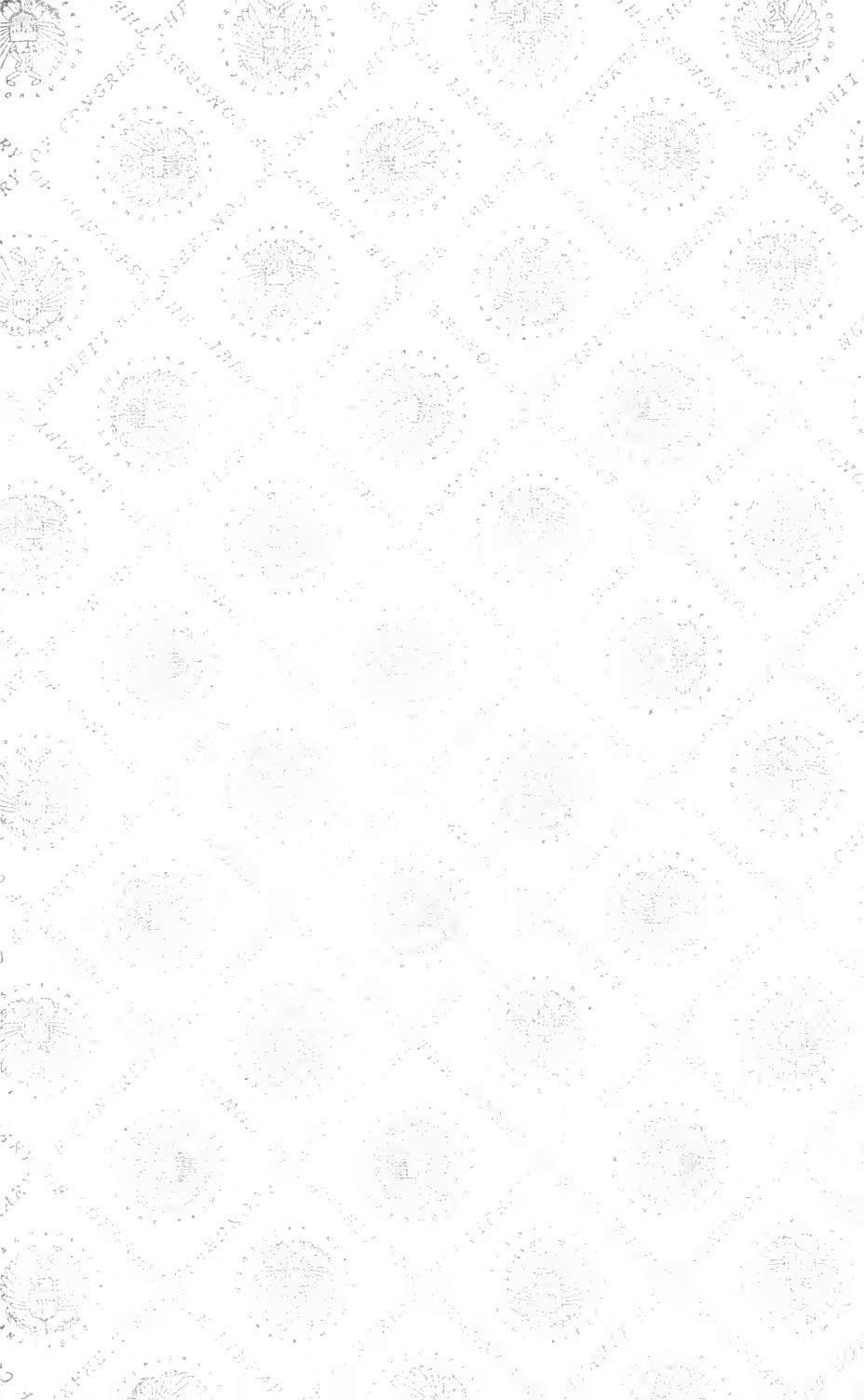
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ADDRESS

OF

HUGH N. SMITH, OF NEW MEXICO,

TO THE PEOPLE OF THAT TERRITORY.

To the People of New Mexico :

As your delegate to the Congress of the United States, I regret to inform you that my mission has failed; your rights as citizens, under the Government of the Union, assured to you by the treaty of cession, have thus far been denied. As a people, constituting a large community, once a department in the federative Republic of Mexico, you certainly are entitled to the right of modified representation, which has heretofore been accorded to the people in all other Territories of the United States, in which such an organization existed as could be recognised as a government. This right has always been conceded upon the principle that the inchoate governments, charged with the interests of a people, who are, at some time, to come as a State into the Union, should have a representative on the floor of one branch of Congress, to make known the condition, to advocate the interests, and defend the rights of a community, which, in its infancy, is to receive from the National Legislature those fundamental and radical impressions which shape its future destiny. If the great American principle of the right of representation which has been extended to all the territorial governments of the United States, (even to those having the care of a few scattered people, as in the case of Florida, or where, as in the case of Minnesota, there was no legalized government at all,) it ought surely now to be extended to you, my constituents, a people who come with a novel government into the Union, which is to undergo great changes; who have a multitude of vast interests to be arbitrated in Congress, which once decided, are decided forever; and who, above all, have a right to be heard, at this moment, in the halls of the supreme civil authority, because you and your civil government are now at the mercy of a military dictatorship, when your State is threatened with dismemberment, and, what is yet more fatal, the introduction of slavery into its

bosom. But the very ground upon which you are justly entitled to representation is the reason for its denial. It is this double design against whatever is most dear to you as a people, (against your right to the limits of a domain which you inherited, whilst Texas, that would sever it, was an unexplored wilderness, and against your right to exclude slavery from it, which was sealed by a constitutional sanction coming with you into this Union,) which has excluded your delegate from a seat whence he might repel the invasion.

The most formidable part of this combination against you is that which originates in the slave interest. It not only rallies against you the whole slaveholding South, but all the influence of selfish, venal, and ambitious men in the North, looking to speculations in discredited bonds and land jobbing, or to the political honors which the combined vote of the South may promise. The cement of this strength in the South is not so much the interest in slave property, but the political power dependent on it. The great struggle is to secure for the decaying popular force of that section an equal weight in the Senate of the United States with the rapidly progressive population and multiplying free States of the Union. To this aim the rights and interests and all the hopes of a rapidly growing and rich prosperity, which beckoned New Mexico into the Union, are to be sacrificed. The doctrine of the slaveholding States, in regard to their domestic institutions, is non-intervention: but with regard to yours, it is *instant intervention*, to set at nought the prohibition of slavery which you brought with you into the Union, as one of your fundamental laws, and a fixed municipal policy—a policy which, now that you are under the shield of the great North American Republic, would invite into your country the intellect, industry, skill, enterprise, and capital, not only of the free States of the North, but a portion of that emigration from Europe which is now filling up the agricultural regions of the Mississippi, and the golden mountains, valleys, and commercial ports of California, with a teeming population. Making the link between these two great countries, you could not fail to partake of their prosperity, if you could escape that blight which has doomed the fairest portion of our continent to a premature decline. Virginia, the first and greatest of the States of the Union; richest in her great men, her soil, her minerals, her bays, her rivers, and her delightful climate, has sunk into a third rate State, under the decay which affects the root of all growth in nations as in individuals—the decay of enlightened labor. Such has been the fate of Virginia, and yet her fate has been better than that of any of her Southern sisters. The vigor which the free municipal institutions of England infused into the race that gave the first impulse to the Southern Commonwealths, has been gradually running out

under an adverse system. The labor of negroes, in exempting the master from labor, has made every free man look to such exemption not only as a relief from painful effort, but as a privilege and an honorable distinction. Hence slave labor has destroyed the industry of the free race, and the prosperity of the State is made dependent upon the forced exertion of those who have no interest in it; while those who have are enervated and subjected to all the demoralization which must flow from a system which makes easy indolence a mark of superiority. The freemen who, in such a State, are compelled by poverty to labor, must become yoke-fellows with the degraded African race, which makes up the mass of cultivators. Those of the free white men who submit to this soon sink to the level of the black laborers with whom they associate; while every one whose innate energy and intellect teaches him to spurn it, leaves the State, and adds to the multitude who fly from it, to exalt the prosperity and grandeur which beams on the free States of the Union, making them the miracle and glory of this age of progress.

I point your attention to the fatal tendency of the system which the South seeks to impose upon you, to stay its own downward course, with feelings of deep chagrin. I am myself a native of the section whose fate I deplore, and if my duty to you did not require, I would be the last to advert to the malady which preys upon its life. As your representative at the seat of political power, I am bound to reveal to you the machinations of which you are the object, and to open to your view the consequences which would attend its success. The schemes of those who would bind you to the destiny of the slave States, render it necessary that your Representative should be excluded from the Halls of Congress; that your civil government, and the laws you brought with you, should be denied recognition; that you should be left in a condition too helpless to defend your own rights, while the plans were maturing for their sacrifice. You need not ask, then, why have our own petitions, respectfully presented, been rejected? Why our rights, which are certainly indisputable, been so long withheld? Why we have been compelled to live under a military domination so repugnant to freemen, and so opposed to the acknowledged spirit and foundation of this Government? Why our condition, instead of being improved by the transfer of allegiance as was promised to us, has been continually getting worse? Why this Government has so long neglected giving you that protection against Indian depredations which was so often promised, both before and since the treaty of cession? Why the connection with this Government, which you have been encouraged to look forward to as the beginning of your prosperity and improvement, has had its opening with three years of depredation, miserable, misrule, and military

despotism. *You are left prostrate, that Texas may dismember and divide New Mexico, and subject her to Southern influence; that negro slavery may be introduced into the remnant of territory that may not be appropriated to Texas; and, finally, that the region thus secured to Southern policy may become the stock on which to graft new conquests from Mexico.* To this whole policy I know you entertain the strongest repugnance. The deep stake which you have in the issue of this scheme, demands from you a thorough examination and speedy action. It is beyond a question, that you cannot expect that assistance and support from this Government which you certainly had a right to look for. That you have been deserted and transferred to the power of Texas, so far as the administration of the War Department—to which you are committed by the Executive of the United States—can effect it, you have the evidence in the conduct of your military government. While the Administration say here, that you have a Government under which you can well afford to live, and under which you are amply protected, the Secretary at War is giving instructions to that Government itself to desert you, when you have most need of an organized resistance—thus making it manifest that the Administration here, (and especially the Secretary of War, a Southern man,) connives at the Texan scheme to dismember your Territory, and the Southern scheme of opening it to slavery. The Administration claims to be neutral in this controversy between the authorities of Texas and the people of New Mexico, but when it is understood that the people of New Mexico have no other civil government than that which is administered by the military commanders sent there by the War Department, and those holding commissions under and during the pleasure of these military commanders, and when we see that they have been instructed not to resist the authorities of Texas in their attempt to assume jurisdiction over the people of New Mexico, is it not manifest that this *“neutrality”* is a virtual surrender of the actual government of New Mexico into the hands of Texas? Does it not demonstrate the connivance of the slaveholding Secretary of War in the schemes of Texas and the South?

It is useless for me to remind you that you have no other than a military Government to administer the civil laws with which you came into the Union, (and under which you and your ancestors have lived for two centuries,)—what other Executive have you, but the commander of the troops in New Mexico? Does he not absolutely control all the civil establishments of your country? Is there a civil officer but holds his office by commission from the military officer during his will and pleasure? Has he not, indeed, assumed to order the courts whom to bring to trial, and in every way prescribe their jurisdiction? And when the Secretary of War com-

mands him not to interfere, or prevent the officers from Texas to exercise their commissions in your Territory, can that be called a neutrality? Is it not a virtual abandonment of the government? If you had a separate civil government, entirely disconnected with the military commanders of the country, then their non-action might be deemed a neutrality. But now, by this non-action, they compel you to resist the military government which the United States have set up over you, and then organize a government and prepare a resistance to the encroachments of Texas. Being thus deserted by this Government to the extent to which this Government can desert you, (for I have appealed in vain to the Secretary of War and the President, to prevent this collision until the question can be adjudicated and settled by some competent authority,) it only remains for you to decide whether you will tamely submit to this assumption of power. Texas, knowing the illegality and injustice of her claim, refuses to submit what is a question of law to an impartial Judiciary; and the question of her right, has assumed an entirely sectional and geographical phasis. It is sustained by the assertion, the sympathy, and assistance of the entire South, the motives and object of which are too plain to be disguised; it is avowedly to be a forcible extension of their peculiar institution over a country whence it is now excluded, and where it is repugnant alike to the feelings and interests of its inhabitants. Under the cover of this Texas claim the approaches are made—designed to give a lodgment to slavery in New Mexico, which shall convert it into a new slave State on its introduction into the Union. Out of the dismembered remnant given as a portion to Texas, she will be enabled to eke out another, to come in as one of its four new slave States counted on, to counterpoise the free institutions of the North. If this should not be sufficient, Mexico proper will then be at hand to undergo a new partition, or a total submersion in a new Southern slave confederacy.

The first step in this process is to supplant the fundamental municipal institutions brought by New Mexico with her into the Union, by a territorial government, which, by omitting the inhibition against slavery in the Congressional act, failing to reserve that contained in the Mexican code, and preventing the people of the Territory from legislating upon the subject of slavery, and from re-enacting the prohibitory clause, will unquestionably abolish all protections against that institution; and, indeed, more effectual legislation for the extension of slavery into New Mexico could not be enacted. Under it the whole body of Southern influence, inspired by political ambition, and looking to preponderance in the aristocratic branch of the Federal Government, through an equality of representation without an equality of numbers; in part, too, actuated by panic touching the

institution at home—in part by hopes of greater pecuniary gains to be derived from it, in a country of mines—now that mining is a mania—would combine to pour an immense colony of slaves into New Mexico; the consequence of this would be to level the whole population of New Mexico with the new caste brought into competition; and you, my Mexican fellow-citizens, who till your own soil with your own hands, would be compelled to fly your country, or be degraded from your equality of freemen, forfeiting all your hopes of rising to the new elevation promised by your alliance with the great North American Republic, and living only to witness the ruin of all that renders life desirable.

And what is this pretext of a claim by Texas to New Mexico, under which the South seeks to destroy or reduce to nothing your rights as a people? The origin of it is, the claim of the United States to the boundary of the Del Norte as the western limit of Texas, when as a province it was held as part of Louisiana. But, when the United States asserted a claim to Texan territory on the Del Norte, it was never pretended even that there existed any semblance of title to that portion of the Del Norte which was embraced in the boundaries of New Mexico. Before France, from whose Government the United States derived its title, asserted its ownership over the wilderness of Texas, in virtue of the right of discovery—an hundred years before a civilized foot-print had been made in the country towards fixing a limit on the Del Norte, or elsewhere—New Mexico was discovered, conquered, and colonized by the Spaniards; and during all the protracted modern negotiations on the part of the United States with Spain, in regard to the boundaries of Texas, the boundaries of New Mexico were as well established and as universally acknowledged as those of Virginia, having preceded that State, and all other States of the American Union, in becoming an established government, with ascertained limits for its jurisdiction. In claiming the Del Norte for its territorial boundary, the United States looked only to the lower part of the stream, when it was not included within the unquestioned limits of New Mexico, which were recognised also as being the limits of the wilderness territory, as having preceded its exploration, or any claim asserted by France, or any other Power, in right of discovery or possession. The Government of the United States, in sending General Taylor to the Del Norte to protect the asserted claim of Texas before the war, gave him no warrant to invade New Mexico, by approaching the Del Norte in that quarter. All the world would have considered such an order as an act of war, and General Taylor would as soon have thought of marching to the City of Mexico, under the order to protect the frontier of Texas on the banks of the Del Norte, as to have marched to Santa Fé, on the upper section of that river. Can, then, the recent

right to territory to the sources of the Del Norte, now set up by Texas in derogation of the prescriptive right of New Mexico, be maintained as derived from conquest or revolution? This would not be a grosser violation of the truth of history than to assert its derivation from discovery and colonization. It is well known, as I have said, that New Mexico was discovered, conquered, and colonized by the Spaniards one hundred years, at least, before a European had set foot upon the soil of Texas. If you trace the history of its conquest and settlement by Don Juan Oñate, in 1595, down to its cession by the treaty of Guadalupe Hidalgo, it is clearly seen that New Mexico has never acknowledged any allegiance, or submitted to any power, save that of the Kingdom of Spain and the Republic of Mexico; that, in all its demarkations and its extent, in its history, political, social, and commercial relations, it was as entirely disconnected with Texas as with any other portions of Mexico, and had greatly less intercourse with her than with the State of Missouri.

Even France, in the largest extent of her claim for Louisiana, never pretended to embrace within her limits the settlement of New Mexico. The earliest discoverers, and the most respected geographers, have acknowledged the limits and extent of New Mexico. But it is useless to enumerate historians or geographers who have written upon or described our territory; its extent and the limits of its jurisdiction are well known, and have been defined by the highest authority. The viceroy, Joseph Sarmiento, Marquis de la Laguna, whose original draft is now in my possession, described the boundary between New Mexico and New Biscay to be at the Rio Nombre de Dios or Sacramento, and designated this boundary so as to confine each governor of these respective provinces within his own jurisdiction, and expressly described the village of El Paso to be within the jurisdiction of New Mexico.

Translation of a Spanish document, dated Mexico, March 8, 1697.

Don Joseph Sarmiento Valladores, knight of the order of Santiago, count of Montezuma, Señor de Monterosano, viceroy, governor, and captain general of New Spain, President of the Royal Audience: Whereas, whilst governing this New Spain, the most excellent Señor Conde de Paredes, Marquis de las Lagunas, was pleased to make the following order:

Don Thomas Antonio Lorenzo Manuel, &c., having named as governor and captain general of the province of New Mexico, Captain Don Domingo Vironza Petris de Cruzat, and having resolved in general council that it was necessary and convenient for the faculty, which to the above named I have conceded of granting lands, it should be notified to the governor of Viscaya, in order that he may keep within those of his own jurisdiction, which alone concern him; so that reciprocally, one and the other, they may have good correspondence, keeping themselves each one in the limits of his own jurisdiction, adjusting them to the demarkations of their governments, it being understood that that of Viscaya runs to the Rio de Nombre de Dios, or called the Sacramento, and that from thence commences the district of the government of New Mexico, with which declaration shall cease all dif-

ferences. By this present, I order the said Don Domingo Vironza Petris de Cruzat that he shall intimate and make known this resolution to Don Bartholeme de Estrada, knight of the order of Santiago, governor and captain general of the kingdom of New Viscaya, so that if he shall have anything to represent, he may do so to this superior government, contenting himself in the mean time. And I order to the above named, that all the Spaniards who may have fled from the Paso, and other jurisdictions of the province of New Mexico, in the district of their government, that he shall constrain them to return to said place—informing me with particularity of having executed the above order, and all other duties which present themselves. Mexico, August 20, 1682. El Conde de Paredes, marquis de la Laguna. By order of his excellency, Don Pedro Velasques de la Cadena.

Wherefore it is provided by his Majesty, that the Castillian, Don Pedro Rodrigues Cabero, as military and political governor of the said province of New Mexico, orders to be given, and gives by duplicate said orders, that it shall be observed, fulfilled, and executed according to its tenor. Mexico, March 8, 1697.

Signed,

JOSEPH SARMIENTO.

This Rio Sacramento, or called Nombre de Dios, is within what is now, and for a long time has been, the acknowledged territory of the State of Chihuahua. The Mexican Congress regulated the limits of their jurisdiction, and by an act of the 27th July, 1824, extended Chihuahua to the point of the Paso del Norte. Further than that decree or act curtails New Mexico, her limits and jurisdiction have not been encroached upon.

But it is scarcely necessary to adduce facts or arguments to show that Texas and New Mexico were entirely separate and distinct departments—as much so as two departments of the Mexican Government could be—previous to the Texan revolution; that there was an intervening prairie waste of near six hundred miles between the nearest settlements of the two countries; that this was roamed over by the wild Comanche, who alone knew whether a practicable road could be made to connect the two settlements. In that space the Indian held undisputed sway.

Nor is it necessary to adduce any facts to show that, previous to the time of the Texan revolution, New Mexico had always held in undisputed, peaceful, and legal jurisdiction all the Mexican settlements north of El Paso. The above decree taken from your own archives and the records of your Territory prove it conclusively. Even the Texans themselves will acknowledge that there was no connection, affinity, or intercourse between the countries previous to the commencement of her revolution; and that she never, previous to that time, even claimed to embrace within her limits any of the settlements of New Mexico.

Let us look now to her war with Mexico, and see what claim she can pretend to New Mexico; why her “magnificent empire carved out by her sword” (as Mr. KAUFMAN calls it) should look to embracing half New Mexico. If she was an independent republic by conquest and revolution, she certainly can embrace within her limits only that which she actually con-

quered or successfully revolutionized. You did not join her in her war, and through all the varied fortunes of that eventful and brave struggle we look in vain for any compact or co-operation by the New Mexicans to throw off their allegiance to the Mexican Government. Could you be revolutionized without your knowledge or consent, you could scarcely be conquered and transferred to the conqueror, and still remain in entire ignorance of the fact. You could scarcely become an integral part of a new republic, governed by the people—one in which the majority controlled—without being at least made aware of it, and without any representation in its conventions, councils, or participation in its government, when you constituted, if not a majority, at least half of the entire population within the limits of the so called republic.

Until the one single but unfortunate invasion of your country by Texas, it is not asserting too much to say, that you knew nothing whatever of her war. You had not participated in it either for or against her. You knew nothing of her causes of complaint against the Mexican Government. So little connection or intercourse was there between the two departments, that not one-third of your people knew even that she had revolted, and was struggling for her independence; and not one-tenth of you had ever heard that she claimed to embrace almost your entire country within her limits. But she claims that, by treaty, in May, 1836, entered into with Santa Anna, the boundary between Texas and Mexico was established on the Rio Grande, from its mouth to its source; but it is worse than ridiculous to call that a treaty, between two governments, which is extorted by duress from a commanding general, who is a prisoner of war in the hands of the enemy. As well might you contend, that if the famous Texas expedition sent to invade New Mexico, in 1841, had capitulated and agreed to cede to you one-half of Texas, your claim to the country, so granted, would have been as good as that of Texas, based upon the treaty of Santa Anna.

But to show that it was not a treaty, but only a stipulation on the part of certain officers to try and procure a treaty from the proper and legitimate Government of Mexico, and expressly on its face requires confirmation from higher and better authority, it is only necessary to look to the very language of the fourth article of the stipulation and agreement:

4th. "That the President Santa Anna, in his official character as chief of the Mexican nation, and the Generals Don Vicente Filisola, Don José Urea, Don Joaquin Ramirez y Sesma, and Don Antonio Gaona, as chiefs of armies, do solemnly acknowledge, sanction, and ratify the full, entire, and perfect independence of the Republic of Texas, with such boundaries as are hereafter set forth and agreed upon for the same. And they do solemnly and respectively pledge themselves, with all their personal and official attributes, to pro-

cure, without delay, the final and complete ratification and confirmation of this agreement, and all the parts thereof, by the proper and legitimate Government of Mexico, by the incorporation of the same into a solemn and perpetual treaty of amity and commerce, to be negotiated with that Government, at the city of Mexico, by ministers plenipotentiary, to be deputed by the Government of Texas for this high purpose.

"5th. That the following be, and the same are hereby, established and made the lines of demarcation between the two Republics of Mexico and of Texas, to wit: The line shall commence at the estuary or mouth of the Rio Grande, on the western bank thereof, and shall pursue the same bank up the said river, to the point where the river assumes the name of the Rio Bravo del Norte, from which point it shall proceed on the said western bank to the head waters or source of said river," &c.

And even if Santa Anna, with perfect freedom and without restraint or duress, had purported to make an absolute and unconditional transfer of territory to Texas, and the parties had not expressly agreed that confirmation by the proper and legitimate Government of Mexico was necessary, it could have conveyed nothing. Independent of this agreement and understanding by both parties to the *solemn compact* that there was an existing Government of Mexico, whose consent was necessary to a treaty of cession, it is well known that the laws of Mexico did not invest any officer with supreme control of the affairs of the nation whilst he is in the field. So soon as he assumes actual command of the active forces, his civil jurisdiction as president and supreme executive of the Government must cease; and the very correspondence from Mexico, in which they acknowledge Santa Anna's defeat by the Texans, is conducted by order of a President pro tem.; showing that the proper and legitimate Government did not recognise Santa Anna as its head or chief. Nor could Santa Anna and the President pro tem. combined have made such a transfer. The sovereign Congress of Mexico alone had such power. But this President pro tem., instead of consenting to this cession of the territory and agreeing to give up to the Rio Grande, expressly instructs Gen. Filisola to retain "Bexar, as its preservation is of absolute necessity, in order that the Government, according to circumstances, may act as they see fit." And Bexar is certainly on the east side of the river, and within the ceded territory.

Upon this so called treaty or compact then made between Santa Anna and President Burnet, Texas, who, in declaring her independence and laying the foundation of her revolution, had not as yet gone beyond the old limits of the department, now, in December, 1836, seeks to extend her limits so as to comport with the *compact*, and passed the following act to define the boundaries of the Republic:

"An act to define the boundaries of the Republic of Texas.

"*Be it enacted by the Senate and House of Representatives of the Republic of Texas in Congress assembled, That, from and after the passage of this act, the civil and political jurisdiction of*

this Republic be, and is hereby declared to be, the following boundaries, to wit: Beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the *mouth of the Rio Grande*; thence up the principal stream of said river to its source; thence," &c.

But could this act of her Congress, based upon a compact or treaty, itself null and void, as being wanting in the important requisites of power in the parties to make it a treaty, and being nothing more nor less than a pledge of certain officials (as I have shown) to try and procure a treaty, could this effect the vested rights of New Mexico, or set aside actual possession? Let higher authority speak in reference to this; and I quote now from the ablest and most zealous of the advocates for Texas. Mr. Woodbury, in his speech in the Senate of the United States, says:

"Most people considered the line to run north on that river (the Rio Grande) only to the mountains, though the legislature of Texas, by a law, have claimed to run to its source. But Texas, by a mere law, could acquire no title beyond what she conquered from Mexico and actually governed. Hence, though her law includes more than ancient Texas, she could hold and convey only that; or, at the uttermost, only what she exercised clear jurisdiction over. As to that there is and can be no eventual contest; and the deed of cession, like one by an individual at common law, would practically pass no more than was owned, and under it the grantee would get no more if he could, and could not if he would."

And in a note to same speech, he says :

"The law of Texas, including in her claim more than she actually occupied, doubtless originated very *innocently* in the compact by Santa Anna with President Burnet in 1836, agreeing solemnly that Texas should extend not only to the mouth of the Rio del Norte, but thence to its source."

And if she had ever conquered from Mexico a foot of the soil of New Mexico, or actually governed it, it is certainly not known in the history of the two countries, and Texas, we know, has generally recorded all her successes. Nothing, then, was done by Texas to make this her boundary, so far as New Mexico was concerned, except to declare it to be the boundary; and, therefore, up to the time of her annexation to the United States, or until the treaty proposing annexation was entered into and submitted to the Senate, her right rests entirely upon this act or claim by her Congress; and this right is weakened, if it could be made weaker than a bare claim without right is, from the fact that, in the only attempt she made to extend her authority into New Mexico, she found an authority in possession, and her expedition met with a disastrous defeat. And there has never been a time when Texas would not have found an authority in possession of New Mexico adverse to her control. If the single act of claiming on her part could establish any right to waste, unappropriated, or unoccupied lands, it certainly is different where, as in the case of New Mexico, there has been

from the very discovery of the country an undisputed, quiet, and unbroken adverse possession.

When the annexation of Texas to the United States was proposed by the treaty in 1844, it said, "the Republic of Texas cedes to the United States all its territories;" and how may I ask, was it then construed; what extent was it then intended to embrace, let its most eloquent, able, and indefatigable advocates speak. They contended that Texas could only embrace what she had revolutionized, conquered, and reduced to her subjection.

Mr. WALKER, in his speech on Annexation, May, 1844, says:

"Now there is no description of boundary in the treaty. The words are, the Republic of Texas cedes to the United States all its territories. If these territories extend to the Del Norte they are ceded, not otherwise. It is said that Texas, by the act of her Congress of 1836, claims to the Del Norte, and that, therefore, the cession by name necessarily extends to that boundary. But the boundaries of a nation depend upon something more than its own claims; these may extend beyond its rightful limits, and when it is ceded by name, that cession extends only to the country embraced within its lawful boundaries."

Mr. BREESE, in speaking of the objections urged to the limits and boundary, says:

"I consider all these objections as futile. If Texas has no claim to the left bank of the rio del Norte, we get no right by the cession. The cession for all she does possess is good. If I convey five hundred acres of land, and have title to but one hundred of it, is not my conveyance valid for the one hundred? What shall be the true boundaries of Texas is left by the treaty as an open question, as all such matters usually are. When we acquired Louisiana in 1803, the boundaries were not defined, and it was not until 1819, they were established west to the Sabine. The limits of Texas are to be adjusted hereafter."

Mr. OWEN, of Indiana:

"This matter of boundary, about which much has been said, is a very simple one; even supposing the treaty of annexation ratified in its present form. By that treaty, (article 1,) Texas cedes to the United States all its territories, no boundaries whatever being specified. Whatever territory Texas *is lawfully entitled to*, the United States would, therefore, by the ratification of that treaty, acquire; no more and no less.

Mr. Sevier, in the Senate, January 4, 1848, says:

"I am one of those who have ever contended, and do now contend, that the territory lying between the Nueces and Rio Grand, and below New Mexico, rightfully and properly belongs to Texas by title of conquest and possession. I never did contend that the country east of the Rio Grande, and included in New Mexico, did belong to Texas, for she neither conquered nor held possession of it."

Mr. Ashley, in his remarks in the Senate in 1845 upon the annexation of Texas, speaking of its extent, said:

"And here I will add, that the present boundaries of Texas, I learn from Judge Ellis, the President of the convention that formed the constitution of Texas, and also a member

of the first legislature under that constitution, were fixed as they now are, solely and professedly with a view of leaving a large margin in the negotiation with Mexico, *and not with the expectation of retaining them as they now exist in their statute book.*"

Mr. Inge, of Alabama, in 1848, said:

"The only claim of Texas to any part of her territory rests upon *successful revolution*, and as far as her revolution extended, *pari passu* her territory extended."

Mr. BUCHANAN, in his speech on the Annexation, says :

"They left the boundary of Texas without specification in the treaty, and have promptly offered to adjust it with Mexico on fair and honorable terms. Texas has always claimed to the Del Norte, and is now in possession of the whole of the left bank of that river to the Paso, nearly a thousand miles from its mouth. Her claim to that portion of New Mexico which lies east of this river and north of the Paso, is certainly of a very doubtful character ; and it is one upon which we ought not to insist."

In his correspondence with Mr. Slidell, after contending that Texas extended to the Rio Grande as far up as El Paso, and had thus far been represented in her government and reduced to her subjection and control, he says :

"The case is different in regard to New Mexico. Santa Fé, its capital, was settled by the Spaniards more than two centuries ago ; and that province has been ever since in their possession and that of the Republic of Mexico. The Texans never have conquered or taken possession of it, nor have its people ever been represented in any of their legislative assemblies or conventions."

If, then, these distinguished statesmen regarded "Texas with all her territories" as leaving the boundary an open question, and as conveying only what she could *rightfully* claim and had reduced to her subjection, and that such a conveyance "would convey no more if she could, and could not if she would," with how much greater force will this restrictive construction apply to annexation as changed to the expression used in the resolutions which afterwards consummated the act. The objection which was urged so successfully to "Texas with all her territories," and which was conceived to be obviated by changing the phraseology to "the territory properly included in, and rightfully belonging to, the Republic of Texas," certainly meant something. And it could mean nothing else than that our Government did not recognise, as belonging to her, all which she claimed; but intended, by express words, to restrict her conveyance to what she actually held, and had a right to hold and to convey.

And had not every department of our Government recognised Santa Fé as being in Mexico; had we not consuls and commercial agents there; and in 1841 and 1842, had not the President, in his correspondence to secure the release of the ardent young Americans taken prisoners in the Santa Fé expedition, acknowledged it to be in Mexico and within her jurisdic-

tion? The House of Representatives, on the 14th of January, 1842, called upon the President, by resolution, to lay before them the information in his possession, "touching the American citizens captured near *Santa Fé, in Mexico.*" And in conducting that correspondence he had recognised it to be a part of the Republic of Mexico.

This all occurred before annexation was consummated. Let us see what our Government has done since that, by solemn acts of its different departments, to fix and recognise the jurisdiction and Government of New Mexico.

After the annexation of Texas, you very well know that a consul and vice consul were appointed and maintained by our Government at Santa Fé, until the breaking out of the war and the invasion of that country by Gen. Kearny; that the citizens of the United States were required to pay duties and tribute to the Mexican government; that that government alone controlled the custom-houses, the revenue, and entire management of the country until the arrival of Gen. Kearny at the very entrance of your capital; that the President of the United States expressly said that Santa Fé was the capital of New Mexico, and New Mexico a Mexican province, which Texas had never conquered or reduced to possession, or brought under her laws; and if the United States forces were ordered to invade it and seize it as part or portion of Texas, this fact was most scrupulously concealed from you; no proposition was then made to divide or dismember the territory, but every promise of protection and inducements to reconciliation were offered you, and you were promised that your whole territory should be embraced within a liberal territorial government.

But a solemn act of Congress, which required of course the confirmation of other departments of the Government, had fixed and decided your locality and your nationality. After the annexation of Texas, and when she constituted a State of the American Union, so far as the act of our Government was concerned, an act was passed 3d March, 1845, entitled "An act allowing drawback upon foreign merchandise exported in the original packages to Chihuahua and Santa Fé, in Mexico, and to the British North American provinces adjoining the United States." And the act required that, upon the arrival of such goods at Santa Fé or Chihuahua, they should be submitted to the inspection of the consul of the United States. And could any act in more express and positive terms declare you then to belong to Mexico? You were as positively fixed to be Mexican, as that the British North American provinces belonged to Great Britain. Could any thing be more expressive and conclusive than this fact, that after annexing all which properly was included in and rightfully belonged to Texas, our Government by as solemn an act as this should proceed immediately to

fix and declare you, who had been claimed by Texas, to be still Mexican citizens and subjects, and that you did not rightfully belong to Texas, but were, as they continued afterwards to recognise you, a constituent part of the Mexican Republic. And again, Mr. Secretary Walker, who as Senator Walker had declared, in discussing the treaty of annexation, that "the boundaries of a nation depend upon something more than its own claims;" in his annual Treasury report to Congress afterwards, in December, 1845, says "The act of 3d March last, allowing a drawback on foreign imports exported from certain of our ports to Canada, and also to Santa Fé and Chihuahua, in Mexico, has gone to some extent into effect under regulations prescribed by this Department, and is beginning to produce the most happy results." This declaration by him who had taken so prominent part in the annexation of Texas, now after its entire consummation, speaking of Santa Fé, adds his evidence to its being a Mexican town within the Republic of Mexico, and without any reference or intimation to the claim which Texas had set up to it.

Thus spoke and acted the Treasury Department after the annexation of Texas; let us examine what the Executive said; notwithstanding President Polk commanded his forces to invade and take possession of New Mexico as a province of the Mexican Republic, and afterwards declared that it had been occupied and taken possession of as such, and that "Texas had never conquered or reduced to actual possession, and brought under her laws, that part of New Mexico lying on the east bank of the Rio Grande;" still he says that nothing which he had done could "injuriously affect the right which the President *believes* to be justly asserted by Texas to the whole territory on this side of the Rio Grande, *whenever the Mexican claim to it shall have been extinguished by treaty.*" This is most strange language in the face of the Annexation resolutions; if it was properly included within and rightfully belonged to Texas, it had already been annexed, and there was no Mexican claim to it which it could be necessary to extinguish by treaty. If it was ours by annexation, and then we had the *pedis possessio*, the actual occupancy by our troops; ours by rightful title and actual possession, what had Mexico left to her which she could part with by treaty? But this declaration is not perhaps more strange than that of the President, when he says that "Texas had asserted a right to that part of New Mexico east of the Rio Grande, * * * * * which is believed to be well founded; but this right had never been reduced to her actual possession and occupancy." As a revolted province it could only claim what it had conquered and occupied; still he admits it to be a *just claim*, though wanting in the essential requisites to found a title—conquest and occupancy.

But let us again quote Mr. Buchanan, as Secretary of State, under Mr. Polk; whom we heretofore quoted as saying in the Senate that the claim of Texas, north of El Paso, was "one upon which we should not insist." In his instructions to Mr. Slidell, after saying that there was "no serious doubt" about her title to El Paso, and instructing him to buy all of New Mexico, for which he might assume the payment of all just claims of our citizens against Mexico, and in addition pay five millions of dollars, he continues "should the Mexican authorities prove unwilling to extend our boundary beyond the Del Norte, you are in that case instructed to offer to assume the payment of all just claims of citizens of the United States against Mexico, should she agree that the line shall be established along the boundary defined by the act of Congress of Texas, approved December 19, 1836, to wit, beginning at the mouth of the Rio Grande, thence up the principal stream of said river to its source, thence due north to the forty-second degree of north latitude." And in his same correspondence with Mr. Slidell, he computes the claims of American citizens at more than five millions of dollars, thus offering this sum for a country which he admits was not ours, we ought not to claim, and which had not been embraced within the limits of ancient Louisiana. And can any man of sense say that this distinguished diplomatist and statesman would have gone thus far, if we had already a title which we ought to rely on, if it was already properly included within, and rightfully belonged to, one of the States of our Union?

Now let us examine the articles of Annexation and the conduct of Texas herself; when she adopted her constitution under which she was admitted into the Union, she included in it a provision that "all laws or parts of laws now in force in the Republic of Texas, which are not repugnant to the Constitution of the United States, or the joint resolution for annexing Texas to the United States, should be continued in force;" and I contend that the act of the Republic of Texas defining her boundary, by which she conflicted with Mexico, is repugnant to the very first of the conditions contained in the Annexation resolutions, viz: "that said State to be formed subject to the adjustment by this Government of all questions of boundary that may arise with other Governments." The act which fixed the boundary absolutely and unconditionally was certainly inconsistent with, and repugnant to, that which left it in the power of the United States to adjust and settle; and that it was so construed is evident from the fact that our Government never regarded it, but proceeded at once to try and settle and adjust it with Mexico, continuing to recognise the authority of the Mexican Government in New Mexico, and requiring its citizens to conform to her laws. But Texas herself must have so regarded

it, or else being a popular representative republican government she would certainly have extended an invitation to the citizens of the country adjacent to Santa Fé, to participate with her in framing her constitution and fundamental law, under which they were all to come so brotherly into the Union, and form fellow-citizens of one State; if she properly extended there, she had at least fifty thousand citizens whom she was disfranchising, and this disfranchisement at least we did not expect until she had been fixed in her control by other and higher power.

Why, you will ask, then, does a pretence to control you, so baseless in itself and so insolently put forward, receive any encouragement or support from a Government which you have been taught to believe denies nothing to the weak? Why has Texas been permitted to retard your advance; to delay that encouragement and protection you have been induced to believe this government extends to all its citizens, and has so often promised to you? Why has a military government been retained over you by the President and Secretary of War, which they secretly instruct to surrender upon the first show of Southern authority? It is by thus leaving you deserted and defenceless, a hope is entertained that you can be driven to receive a government and control which you abhor, and with it an institution which the whole power of the Government is exerted to extend.

But it becomes you to look well to all the consequences and results of a decision that you are properly within Texas. You have every reason to believe that she entertains no kindly feelings towards you. That disposition to a relentless persecution and proscription of all Mexicans within her claimed limits, who would not participate with her in her revolution, is only lulled until she can, by the aid and assistance of the Government, firmly establish her authority over you. As a republic, did she not pass acts disfranchising all within her territory who did not take part with her, or left the country to avoid the struggle; and also confiscating their property? Are not those acts retained in force by her present constitution, continuing all the acts of her republic not in derogation of the Constitution of the United States and the act of annexation? When she attempted to extend her jurisdiction over you, and sent a judge from Texas, did he bring with him the power to extend any of the benefits of Texan citizenship? Was not the so-called county of Santa Fé especially exempted from the benefits of her land system, by which, if you were citizens, you were entitled to full benefits of head rights, entries, and surveys, and by which you could have saved to yourselves your own homesteads and farms? Look even to what they are doing here, when the proposition is before Congress to buy the absurd and groundless title of Texas to your territory; that rep-

representative who *represents* you, as it is asserted here in Congress, proposes as an amendment that if the 34th parallel of latitude is made the northern limit of Texas, and consequently the southern limit of New Mexico, Congress, as a condition of the purchase, shall stipulate to drive the Comanches north of that parallel, that the whole strength of this tribe shall yet be crowded upon you.

You are already surrounded by, and accessible to, forty thousand hostile Indians; at least fifteen thousand warriors. You are less protected, and property and life are less secure now, than when New Mexico was a part of the Mexican territory, even under the most distressed and helpless condition of that unfortunate revolutionary government. In no part of your territory, except immediately within the largest and most populous towns, are the people and their property safe. In the very sight of your capitol, large flocks of sheep and cattle have been repeatedly driven off, and the inhabitants, women and children, killed or carried into captivity from which death itself would be a desirable relief. All attempts to extend the settlements upon the most valuable part of the country, or to explore and develop its resources have been rendered futile and vain, and your population has been contracted by the entire destruction of the most exposed frontier settlements. No road is safe by which you have access to, or egress from your territory, and all intercourse is being cut off with the civilized world.

The wealth of your territory is being diminished. The immense herds of sheep and flocks of cattle which have supplied so largely the Mexican country with meat, are now no longer carried to a foreign market; and your territory, which could supply all Mexico, now scarcely raises enough for home consumption. The amount and value of property lost and taken from the country by Indian depredations during the three years subsequent to its occupation by the troops of the United States, largely exceeds the amount taken the three years previous to their occupation of the country. This, no one conversant with the history of your country can deny, and it is a frightful commentary upon the promises of protection which have so often been made to you. This Government is responsible, too, for that condition of Indian hostilities in your country: for many years previous to the occupation of the territory, many of the most warlike tribes had been at peace with the inhabitants of New Mexico, and there was scarcely ever a time when they were all in open hostility. But the various commanders of that department having assumed to regulate these Indians, compel them to acknowledge submission to our Government, regulate their relations of peace and war with the different tribes, confine them to distinct and marked portions of the

country, demand of them a surrender of Mexican captives, and establish an entire mastery over them who had never acknowledged or submitted to any control from the Spanish or Mexican Governments, and all this, with a force totally inadequate to its execution, was, of course, but to raise up a war which would bring into action the full strength of every tribe. Take, for example, a solitary instance: the band of Northern Apaches which do not number more than one hundred and seventy-five warriors, and infest but a part of the north and northeast portion of your territory; yet it may be confidently asserted, that this single band, since your territory was in possession of the United States forces, have murdered at least as many Americans as they have warriors in their entire nation. besides the number of Mexicans they have killed or carried into captivity; and their entire subsistence during this time has been by plundering our frontier exposed settlements. The Southern Apaches, much more numerous, and as ferocious and warlike, have in the same manner infested the southern extremity of your country. The entire western border is equally exposed to the Navajoes, who have, with perfect impunity, carried their depredations to the heart of the country, and in sight of the flag staff of your capitol. The eastern part is not better protected. This is truly a lamentable picture, and calls loudly, but in vain, for the sympathy and assistance of our Government. The fact that the Indians all live entirely upon horseback; have no settled permanent homes, that all their wealth and property consists of bands of horses herds and flocks; that their predatory habits require constant moving; that they have almost an unlimited extent of vast prairies through which they can retreat, is sufficient to show that cavalry or mounted troops alone can successfully follow and chastise them. All experience in that country teaches that infantry is of no use in the pursuit of such a foe. The most experienced military men have estimated that it will require at least fifteen hundred well mounted men to conquer and reduce to subjection these Indians. Attacking us as they do, by rapid advances and retreats, each warrior provided with a number of horses and relays, it is impossible to be prepared for them at every point where they make an incursion, or to collect a force and overtake them before they are again secure in their mountain retreats and fastnesses. It cannot be said that this state of things is unknown here; I have added my individual testimony to what your convention has said, by repeated representations to the War Department and the President of the United States. All the military officers have reported the country in a deplorable condition; it is all corroborated by every traveller or trader who is fortunate enough to get safely out of the country. The strength, localities, and habits of those Indians have been communicated to Congress, and even the Mexican

minister has found it necessary to call the attention of our Government to the execution of that article of the treaty by which we have promised to protect the Mexican settlements from Indians incorporated in our limits. Your Indian agent continues to add his accounts of the unfortunate condition of the country, and beg for increased protection. These depredations have gone to such an extent without any retribution being dealt upon the warlike and savage plunderers, that it encourages all tribes (and even those at a greater distance from you, who have long been disposed to peace) to undertake the same hostilities and participate in what they deem objects of general spoliation. And yet, in view of all these facts, which the correspondence accompanying the President's message shows him to be in possession of, the President says in that message, that the people of New Mexico are amply protected! Instead of offering you the protection you have a right to expect from the perils which surround and threaten to overwhelm you, the Secretary of War, as I have shown, connives at the introduction of another element of danger in your midst, by lending himself to the Southern scheme to introduce negroes into your territory.

Under the present aspect at Washington, I feel it my duty to say to you, that little expectaion can be entertained of an impartial consideration or a just disposition of your cause. Your opponents are all in power or seeking power. Those who have your fate in their hands have either great interest at stake dependent on your ruin, or high and ambitious hopes that look to consummation through your sacrifice. The great body of the people of the United States love justice, and all their sympathies are with you. My advice, then, is, to appeal to them to avert the mischiefs plotted by intriguing politicians and sordid speculators, AND FOR THE PRESENT RELY UPON YOURSELVES; assert your rights by the establishment of a State government interdicting slavery; gird yourselves up to resist its introduction into your territory as a whole, or into any part by means of dismemberment; and the time will come, when the masses of the Union will rally around your cause, and enable you to defy and defeat all the machinations of your enemies.

HUGH N. SMITH.

WASHINGTON, *April 14*, 1850.

